

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	]	
	]	
v.	]	No.19-cr-222-1-LM;07-cr-232-LM
	]	
EFRAIN PEREZ	]	

**MOTION TO REOPEN BAIL HEARING/  
GOVERNMENT AND PROBATION OBJECTS**

Efrain Perez respectfully moves the Court to reopen his detention hearing pursuant to 18 U.S.C. 3142(f).

As grounds, it is stated:

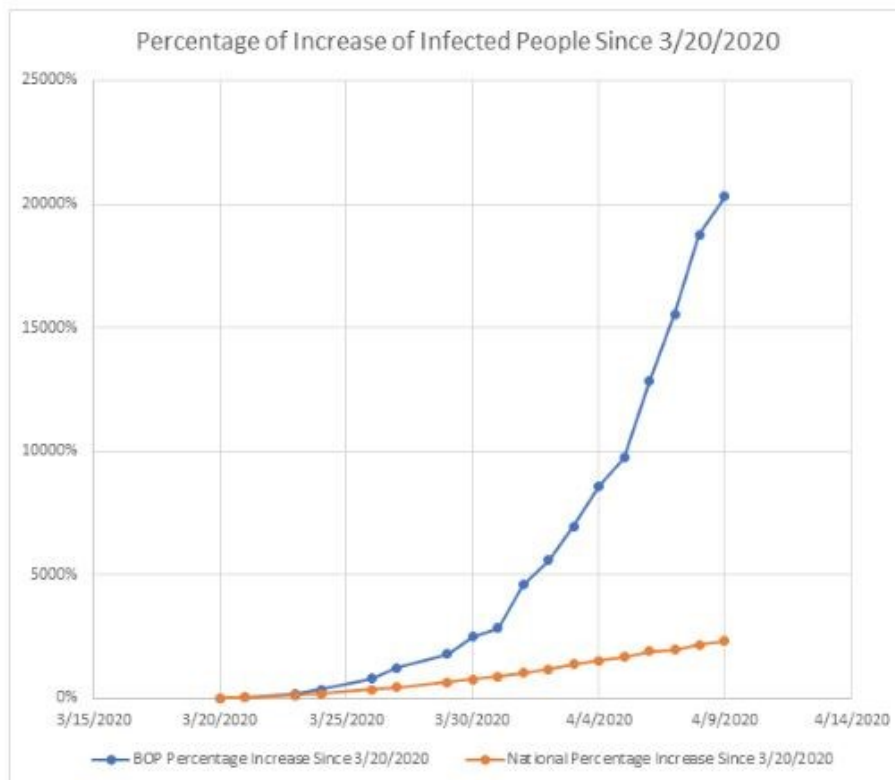
Perez waived indictment and pled guilty to an information charging him with attempted possession with intent to distribute MDMA. The government agreed to a binding plea of 77 months. Perez is detained at Merrimack County House of Corrections pending sentencing on the drug charge and a supervised release violation. Sentencing is now schedule for June 11, 2020.

18 U.S.C. § 3142(f) dictates that a detention hearing “may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” Among the statutory factors that the Court must consider in evaluating release are the defendant’s “physical . . . condition,” *id.* at § 3142(g)(3)(A), and the “nature and seriousness of the danger to any person or the community that would be posed by the person’s release.” *Id.* at § 3142(g)(4). The Covid-19 pandemic is new information that has a material

bearing on the court's earlier decision to detain Perez.

*The COVID-19 pandemic and detention facilities*

Since Perez's initial detention hearing, the circumstances and health risks accompanying detention have changed dramatically. The COVID-19 virus has taken hold in New Hampshire and elsewhere. The risk of infection is compounded by close social contact. As the virus spreads, those who are incarcerated face a heightened risk of transmission and becoming ill. *See* Matthew J. Akiyama, M.D., Anne C. Spaulding, M.D., and Josiah D. Rich, M.D., *Flattening the Curve for Incarcerated Population – Covid-19 in Jails and Prisons*, New England Journal of Medicine, April 10, 2020 ("To promote public health, we believe that efforts to decarcerate . . . need to be scaled up, and associated reductions of incarcerated populations should be sustained."). The chart found at <https://federaldefendersny.org/> compares the increase in infection rates in the Bureau of Prisons to the national population.



Although it was initially reported that the most severe health impacts of the coronavirus were reserved for the elderly and those with underlying medical conditions, recent data suggests a broader swath of the population is at risk of serious illness. *See* Faith Karimi, *Young adults under age 44 make up a big part of coronavirus hospitalizations in the US*, March 19, 2020, CNN, <https://www.cnn.com/2020/03/19/health/coronavirus-age-victims/index.html> (citing a federal study showing that “[u]p to 20% of people hospitalized with coronavirus in the United States are young adults between ages 20 to 44”).

Individuals with moderate to severe asthma, according to the CDC, may be at a higher risk of getting very sick from the COVID-19. *See* <http://www.cdc.gov/coronavirus/2019-ncov/specific-groups/asthma.html>. It is particularly important for high-risk individuals to put distance between themselves and others. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>. This is essentially impossible in a jail.

According to 2017 medical notes from the Strafford County House of Corrections, Perez was identified as having chronic asthma<sup>1</sup> and using albuterol. Whether medically vulnerable or not, data suggests that even younger individuals are not immune from the risk of serious medical complications from the coronavirus. *See Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020*, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm>; <https://www.nytimes.com/2020/03/18/Younger-Adults-Make-Up-Big-Portion-of-Coronavirus-Hospitalizations-in-U.S>.

Perez will be 37 years old in May. His mobility is compromised due to a motor vehicle accident in January 2019. As conveyed at his prior detention hearing, Perez could reside in

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<sup>1</sup> The medical notes do not characterize the chronic asthma.

Manchester with his significant other, Tina Gaudette, and their two children. This Court can assure the safety of community by utilizing an electronic monitoring device, conditions of home confinement, and other restrictions.

WHEREFORE, Efrain Perez respectfully moves the Court to schedule an expedited bail hearing.

Respectfully submitted,

/s/ Dorothy E. Graham

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2020 the above document was served electronically upon all counsel of record through the CM/ECF filing system.

/s/ Dorothy E. Graham

Dorothy E. Graham